

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

**NIGHTINGALE &  
ASSOCIATES, LLC, ET AL.,**

**Plaintiffs**

**v.**

**S. DOUGLAS HOPKINS  
& ASSOCIATES, INC., ET AL.,**

**Defendants**

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**Civil Action No. 07-4239(FSH)**

**ORDER**

This matter having come before the Court on the motion of the defendant/counterclaim plaintiff for leave to file an amended counterclaim for retaliation under the Connecticut Fair Employment Practices Act;

and the cross-motion of the plaintiff/counterclaim defendant to dismiss Counts 1, 3 and 4 of the Counterclaim;

and the Court having reviewed the record of proceedings and the letter dated December 30, 2008;

and the Court having conducted a telephone conference on the record on December 30, 2008;

and the Court having considered the arguments and representations of the parties;

and it appearing that the approach discussed during the telephone conference and embodied herein will streamline motion practice and briefing;

and for the reasons set forth on the record;

and for good cause shown,

IT IS THEREFORE ON THIS 30th day of December, 2008

ORDERED that the Second Amended Counterclaim [Docket No. 40] is struck;

IT IS FURTHER ORDERED that, no later than **January 8, 2009**, the defendant/counterclaim plaintiff shall file a Third Amended Counterclaim that includes only the counts that were not dismissed, the amended fraud counterclaim, and the counterclaim alleging retaliation under Connecticut law. Said Amended Counterclaim is permitted without prejudice to the plaintiff/counterclaim defendant's right to file a motion pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the Third Amended Counterclaim counts alleging fraud and a claim for retaliation under Connecticut law;<sup>1</sup>

IT IS FURTHER ORDERED that the plaintiff/counterclaim plaintiff shall Answer, move or otherwise respond to the Amended Counterclaim no later than **January 23, 2009**. If a motion is filed in lieu of a reply, then the opposition shall be filed no later than **February 2, 2009** and the reply shall be submitted no later than **February 9, 2009**. The return date shall be **February 17, 2009** before the Hon. Faith S. Hochberg. Her Honor's Chambers will advise the parties if oral argument will be required;

IT IS FURTHER ORDERED that the motion for leave to file an Amended Counterclaim [Docket Nos. 40 and 41] and the cross-motions to dismiss [Docket No. 45] are terminated;

IT IS FURTHER ORDERED that unresolved discovery disputes shall be presented in accordance with the joint letter protocol no later than **January 23, 2009**; and

IT IS FURTHER ORDERED that all other deadlines shall remain unchanged.

s/Patty Shwartz  
United States Magistrate Judge

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<sup>1</sup>The filing of the Third Amended Counterclaim and its omission of the counts that were dismissed pursuant to the Opinion and Order dated November 5, 2008, does not constitute a waiver of the counterclaimants' ability to file an appeal of the Order dismissing those counts at the conclusion of the case. See In Re Crysen/Montenay Energy Co., 226 F.3d 160, 162 (2d Cir. 2000) (citing cases from the Tenth and Eleventh Circuits).